DISMISSAL OF PUBLIC OFFICERS FOR CAUSE.—When an officer does not hold his position at the arbitrary will of the appointing power, it is generally admitted that he is entitled to a hearing before being dismissed.[1] But although there seems to be little doubt on this point, courts are by no means unanimous in the reasons they give for so deciding. It is said by some that the right to hold office is a property or quasi-property right, of which one may not be deprived except by due process of law;[2] others, more cautiously, declare that whether property or not, the right to hold office is a valuable one which courts are zealous to protect.[3] Such reasons, however, are really beside the point, when the legislature has declared that an officer can be removed only "for cause"[4] or for any definite reasons, for it then becomes the duty of the courts simply to decide what procedure is necessary to effectuate this method of removal and no consideration of substantive rights is required.[5]

In the application of such statutes, the necessity of giving the individual every right that he is intended to have is balanced by the courts with the importance to efficient government of the speedy removal of inefficient officers. Accordingly, although it is sometimes said that such proceedings are of a judicial nature,[6] they are never required to approach the technical exactness of a trial at law.[7] It is at least essential that the accused be given seasonable notice of the charges, clearly and unambiguously expressed,[8] and a fair opportunity

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[1]Singleton *v.* Commissioners etc. (S. C. 1797) 2 Bay 105; Ekern *v.* McGovern (1913) 154 Wis. 157, 234; Dullam *v.* Willson (1884) 53 Mich. 392; State *v.* Johnson (1892) 30 Fla. 433; Osgood *v.* Nelson (1872) 41 L. J. Q. B. 329.

[2]See Ekern *v.* McGovern, *supra,* p. 239; Wammack *v.* Holloway (1841) 2 Ala. 31.

[3]See Andrews *v.* King (1885) 77 Me. 224.

[4]Where the statute does not define "cause", it has been interpreted to mean substantial cause as opposed to the arbitrary conclusion of one having power of summary removal. People *v.* Starks (N. Y. 1884) 33 Hun 384; see Gibbs *v.* Manchester (1905) 73 N. H. 265.

[5]See Christy *v.* City of Kingfisher (1904) 13 Okla. 585, 590; Devault *v.* Mayor of Camden (1886) 48 N. J. L. 433.

[6]Arkle *v.* Board of Commissioners (1895) 41 W. Va. 471; People *v.* Police Commissioners (1898) 155 N. Y. 40; Dullam *v.* Willson, *supra;* Murdock *v.* Phillips Academy (Mass. 1831) 12 Pick. 244; *contra,* Donahue *v.* County of Will (1881) 100 Ill. 94, 107 *et seq.;* State *v.* Hawkins (1886) 44 Ohio St. 98; see Pierce's Appeal (1906) 78 Conn. 666. The difference of opinion as to whether such proceedings are judicial or administrative, seems to have been due to the hesitancy of courts to review any executive act of the governor whatsoever. See Matter of Guden (1902) 171 N. Y. 529. The better view now is that the courts may review a governor's acts with a view to determining whether he has proceeded in the manner intended by statutes giving him certain powers to be exercised in a given way. See 13 Columbia Law Rev. 754. Accordingly, the distinction between the judicial actions of a governor and his executive acts to be done in a particular way, is not of importance in determining the jurisdiction of the court.

[7]Devault *v.* Mayor of Camden, *supra;* 2 Dillon, Municipal Corporations (5th ed.) § 482; see Andrews *v.* King, *supra.*

[8]See People *v.* York (1901) 166 N. Y. 582. In People *v.* Humphrey (1898) 156 N. Y. 231, it was held that an officer could not be charged and tried for one offense, and then dismissed for another not contained in the

to defend himself.[9] There is no fixed test as to what is seasonable notice, which must depend largely on the circumstances of the particular case;[10] nor is there any set rule as to what are the essentials of a fair hearing. The right to be confronted by witnesses, and the right to cross-examine and to summon witnesses in defense, are important;[11] and, in some cases, failure to have witnesses properly sworn has been held to be reversible error.[12] Furthermore, the right of the accused to be represented by counsel has been held to be a vital part of a fair hearing,[13] but other courts have decided that the granting of this right is within the discretion of the removing power.[14] In the recent case of *State ex rel. Arnold* v. *City of Milwaukee* (Wis. 1914) 147 N. W. 50, where the city council, in proceedings leading to the amotion of a tax commissioner, refused to allow him to be represented by counsel, such refusal was held to invalidate the proceedings. From the facts of the case the court was undoubtedly correct in so deciding, but if it was meant that, in every case, failure to allow counsel constitutes reversible error as a matter of law, it seems that they went too far. The duty of the courts in reviewing cases of this sort on appeal, is merely to determine whether or not the accused officer has had a fair hearing in the broadest and most untechnical sense of the term. In doing so, they may well take into account the nature and complexity of the charges, and the importance of the office at stake,[15] as in the principal case. It has been pointed out, that the right to reasonable notice both in point of time and in a clear statement of the charges, and the right to a fair hearing, are indispensable requirements; and yet the accused might conceivably waive his right to either.[16] The same reasoning would apply to cases where the right to summon witnesses or to be represented by counsel is denied. Such denials may be said to raise a presumption, in the case of failure to give notice a very strong presumption, in the case of failure to allow counsel, a

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notice, nor put in issue at the hearing. A further reason for requiring a clear exposition of the charges is to enable a court on appeal to decide whether from the facts alleged the removing body could reasonably have found as they did. See Mullane *v.* City of South Amboy (N. J. 1914) 90 Atl. 1030. But the charges need not be drawn in the technical language or manner of an indictment. Joyce *v.* City of Chicago (1905) 216 Ill. 465.

[9]The dismissal should not be the result of *ex parte* proceedings. Murdock *v.* Phillips Academy, *supra;* Bowlby *v.* Dover (1902) 68 N. J. L. 97.

[10]See Duerr *v.* Newark (1893) 55 N. J. L. *272*; Ekern *v.* McGovern, *supra,* 278; State *v.* City of St. Louis (1886) 90 Mo. 19; People *v.* York, *supra;* Throop, Public Officers, § 364; but see *Ex parte* Wiley (1875) 54 Ala. 226, in which case, failure to give notice was held to be a mere irregularity.

[11]Matter of Dumahaut (N. Y. 1899) 43 App. Div. 56; O'Neill *v.* Mansfield (N. Y. 1905) 47 Misc. 516; see People *v.* Nichols (1880) 79 N. Y. 582; *cf.* Reilly *v.* Jersey City (1900) 64 N. J. L. 508.

[12]Tompert *v.* Lithgow (Ky. 1866) 1 Bush. 176; People *v.* Police Commissioners, *supra.*

[13]People *v.* Flood (N. Y. 1901) 64 App. Div. 209; *cf.* People *v.* Nichols, *supra*; see Dillon, Municipal Corporations (5th ed.) § 482.

[14]Avery *v.* Studley (1901) 74 Conn. *272*; see People *v.* Police Commissioners (N. Y. 1883) 31 Hun 209.

[15]See People *v.* Thompson (1884) 94 N. Y. 451, 465.

[16]*Cf.* People *v.* French (1886) 102 N. Y. 583, 586.

much weaker one, that the dismissed officer has not had a fair trial. But if evidence is given showing that the right was waived, or if not waived, that no injustice in fact resulted, it seems clear that the presumption is rebutted. To adopt any other rule tending to make proceedings of this sort rigid or technical, is to give to them the character of a trial at law, which is as little the true interpretation as to allow, on the other hand, the proceedings to become mere formalities gone through by a removing power exercising in reality the right of arbitrary dismissal.

CONTROL OF NAVIGABLE WATERS.—At common law, the ownership of the beds of tidal waters was regarded as *jus privatum,* vested in the crown; but the right to use and control both the submerged land and the water was deemed *jus publicum,* vested in Parliament in trust for the public for the purposes of navigation and fishing. Subject to this parliamentary control, the crown could convey the soil under water to private individuals.[1] In this country, upon admission to the Union, the State succeeds to both the *jus privatum* of the crown and the *jus publicum* of Parliament, and title to the beds not only of tidal waters, but also of navigable inland waters, passes either to the State or the riparian owner.[2] Thus the State, in its capacity as successor to the crown, may grant submerged soil which may not be used, however, to impair the public right of navigation and fishing which in its capacity as successor to Parliament, it holds in trust for the people.[3]

The States have plenary authority over navigation, subject, however, to the supreme and paramount control thereof vested in Congress under the Commerce Clause.[4] Under this provision Congress may authorize the improvement[5] and obstruction[6] of navigable streams, and is the sole judge of the necessity and reasonableness of

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[1] 1 Farnham, Waters & Water Rights, 165-172.

[2] In Pollard's Lessee *v.* Hagan (1845) 3 How. 212, it was declared that the title to the soil of navigable waters passed to the State upon admission to the Union. The waters in question were tidal, and as at that time the admiralty jurisdiction of the United States was held to apply only to tidal waters, the decision must be limited to its facts. The case of Genesee Chief *v.* Fitzhugh (1851) 12 How. 443, decided that the admiralty jurisdiction of the United States extended to all navigable waters, and as a result, the ownership of soil under all such waters vested either in the State or in the riparian owners depending on the local law. St. Anthony etc. Co. v. St. Paul Water Commissioners (1897) 168 U. S. 349; see United States *v.* Chandler-Dunbar Water Power Co. (1913) 229 U. S. 53. See 13 Columbia Law Rev. 531 *et seq.,* for a discussion of the various views relating to the ownership of the bed of a navigable stream.

[3] Parliament is, of course, bound by no constitutional restrictions, and may act as it sees fit in governmental matters, 1 Farnham, Waters & Water Rights, 170, whereas the State may act solely with reference to the powers reserved to it by virtue of the Constitution.

[4] U. S. Const., Art. 1, § 8, subd. 3. Gibbons *v.* Ogden (1824) 9 Wheat. 1, 189 *et seq.*

[5] Gibson *v.* United States (1897) 166 U. S. 269. When Congress has authorized an improvement, an act under the authority of a State in derogation of Congress' action, will be enjoined. United States *v.* Rum River etc. (C. C. 1870) 1 McCrary 397.

[6] Miller *v.* Mayor of New York (1883) 109 U. S. 385; South Carolina *v.* Georgia (1876) 93 U. S. 4.